

ORIGINAL

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

CLERK'S OFFICE
U.S.D.C. Gainesville

UNITED STATES DISTRICT COURT AUG 27 2010
NORTHERN DISTRICT OF GEORGIA

GAINESVILLE DIVISION

By: JAMES N HATTEN, Clerk

Deputy Clerk

CRIMINAL NO. 2:10-CR-030

The United States Attorney for the Northern District of Georgia and Defendant JOSEPH C. PENICK, JR. enter into this plea agreement as set forth below in Part IV pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. JOSEPH C. PENICK, JR., Defendant, having received a copy of the above-numbered Information and having been arraigned, hereby pleads GUILTY to Count 1 thereof.

I. ADMISSION OF GUILT

The Defendant admits that he is pleading guilty because he is in fact guilty of the crime charged in Count 1 of the Information.

II. ACKNOWLEDGMENT & WAIVER OF RIGHTS

The Defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the Defendant would have the right to an attorney, and if the Defendant could not afford an attorney, the Court would appoint one to represent the Defendant at trial and at every stage of the proceedings. During the trial, the Defendant would be presumed innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the witnesses

against him. If the Defendant wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the Defendant did not wish to testify, that fact could not be used against him, and the Government could not compel him to incriminate himself. If the Defendant were found guilty after a trial, he would have the right to appeal the conviction.

The Defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind.

By pleading guilty, the Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could have been filed.

The Defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, the Defendant may be waiving some or all of those rights to appeal and to collaterally attack his conviction and sentence, as specified below.

Finally, the Defendant understands that, to plead guilty, he may have to answer, under oath, questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the Defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

III. ACKNOWLEDGMENT OF PENALTIES

The Defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: 30 years.
- (b) Mandatory minimum term of imprisonment: None.
- (c) Term of supervised release: three years to five years.
- (d) Maximum fine: \$1,000,000, due and payable immediately.
- (e) Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
- (f) Forfeiture of any and all proceeds from the commission of the offense and any and all property used to facilitate the offense.
- (g) Mandatory special assessment: \$100.00, due and payable immediately.

The Defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines and that, under certain circumstances, the Court has the discretion to depart from those Guidelines. The Defendant further understands that the Court may impose a sentence up to and including the statutory maximum as set forth in this paragraph and that no one can predict his exact sentence at this time.

IV. PLEA AGREEMENT

The Defendant, his counsel, and the United States Attorney for the Northern District of Georgia ("the Government"), as counsel for the United States, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

No Additional Charges

The United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the Defendant related to the charges to which he is pleading guilty. The Defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction.

Sentencing Guidelines Recommendations

Based upon the evidence currently known to the Government, the Government will recommend the following applications of the Sentencing Guidelines:

- (a) Pursuant to § 2B1.1(a)(1), the base offense level is 7.
- (b) Pursuant to § 2B1.1(b)(1)(I), the loss was more than \$1,000,000 but less than \$2,500,000, which results in a 16-level increase.

Specific Sentence Recommendation

The Government agrees to recommend that the Defendant be sentenced at the low end of the adjusted guideline range.

Acceptance of Responsibility

The Government will recommend that the Defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, and the additional one-level adjustment if the offense level is 16 or higher. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the Defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the Defendant falsely deny or falsely attempt to minimize Defendant's involvement in relevant offense conduct, give conflicting statements about Defendant's involvement, fail to pay the special assessment, fail to meet any of the obligations set forth in the Financial Cooperation Provisions set forth below, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

**Right to Answer Questions,
Correct Misstatements, and Make Recommendations**

The Government reserves the right to inform the Court and the Probation Office of all facts and circumstances regarding the Defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the Government also reserves the right to make recommendations regarding application of the Sentencing Guidelines.

Right to Modify Recommendations

With regard to the Government's recommendation as to any specific application of the Sentencing Guidelines as set forth elsewhere in this Plea Agreement, the Defendant understands and agrees that, should the Government obtain or receive additional evidence concerning the facts underlying any such recommendation, the Government will bring that evidence to the attention of the Court and the Probation Office. In addition, if the additional evidence is sufficient to support a finding of a different application of the Guidelines, the Government will not be bound to make the recommendation set forth elsewhere in this Plea Agreement, and the failure to do so will not constitute a violation of this Plea Agreement.

Forfeiture

The defendant agrees that he shall immediately forfeit to the United States (1) any and all interest in any and all property, real and personal, constituting, or derived from, proceeds obtained, or traceable to, the commission of the offense set forth in Count 1 of the Information to which he is pleading guilty.

Restitution

The Defendant agrees to pay full restitution to all victims of the offense(s) to which he is pleading guilty and all relevant conduct, including, but not limited to, any counts dismissed as a result of this Plea Agreement. The Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing. The Defendant also agrees to cooperate fully in the investigation of the amount of restitution and the identification of victims.

Special Assessment

At the time of the guilty plea, the Defendant will pay a special assessment in the amount of \$100 by money order or certified check payable to the Clerk of Court, U.S. District Court, and will provide proof of such payment to the undersigned Assistant United States Attorney within 30 days after the guilty plea.

Fine/Restitution - Terms of Payment

The Defendant agrees to pay any fine and restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account or victim(s). The Defendant also agrees that the full fine and restitution amount shall be considered due and payable immediately. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, he agrees that the custodial agency and the Probation Office will have the authority to

establish payment schedules to ensure payment of the fine and restitution. The Defendant understands that this payment schedule represents a minimum obligation and that, should Defendant's financial situation establish that he is able to pay more toward the fine and restitution, the Government is entitled to pursue other sources of recovery of the fine and restitution. The Defendant further agrees to cooperate fully in efforts to collect the fine and restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the Government deems appropriate. Finally, the Defendant and his counsel agree that Government officials may contact the Defendant regarding the collection of any fine and restitution without notifying and outside the presence of his counsel.

Recommendations/Stipulations Non-binding

The Defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement, as well as any stipulations of fact or guideline computations incorporated within this Plea Agreement or otherwise discussed between the parties, are not binding on the Court and that the Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

Limited Waiver of Appeal

To the maximum extent permitted by federal law, the Defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction

and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any ground, except that the Defendant may file a direct appeal of an upward departure or a variance from the otherwise applicable sentencing guideline range. The Defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a direct appeal of the sentence imposed, the Defendant may file a cross-appeal of that same sentence.

FOIA/Privacy Act Waiver

The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

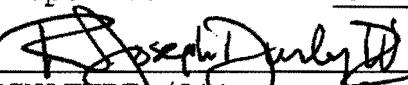
DNA Waiver

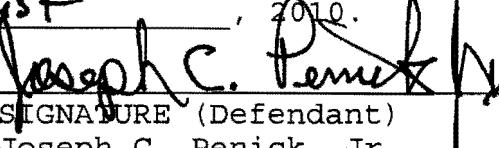
The parties agree that no biological evidence (as defined in Title 18, United States Code, Section 3600A) has been identified in this case; therefore, the Defendant understands and agrees that no evidence will be preserved for DNA testing.

No Other Agreements

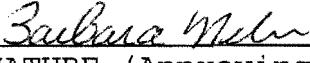
There are no other agreements, promises, representations, or understandings between the Defendant and the Government.

In Open Court this 27th day of August, 2010.


SIGNATURE (Attorney for Defendant)
R. Joseph Darby, III

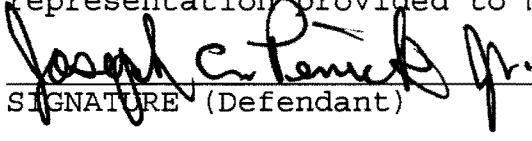

SIGNATURE (Defendant)
Joseph C. Penick, Jr.


SIGNATURE (Assistant U.S. Attorney)
J. Russell Phillips


SIGNATURE (Approving Official)
Barbara Nelan

7/27/2010
DATE

I have read the Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

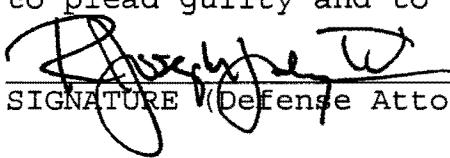


SIGNATURE (Defendant)

8-27-10

DATE

I am Joseph C. Penick, Jr.'s lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.



SIGNATURE (Defense Attorney)

8-27-10

DATE

INFORMATION BELOW MUST BE TYPED OR PRINTED

R. JOSEPH BURBY, IV
NAME (Attorney for Defendant)

Fourteenth Floor
1201 W. Peachtree Street, NW
STREET

Atlanta, GA 30309-3488
CITY & STATE ZIP CODE

PHONE NUMBER (404) 572-6815

STATE BAR OF GA NO. 094503

JOSEPH C. PENICK, JR.
NAME (Defendant)

STREET

CITY & STATE ZIP CODE

PHONE NUMBER

Filed in Open Court

By _____

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	2:10-CR-030
DEFENDANT'S NAME:	JOSEPH C. PENICK, JR.
PAY THIS AMOUNT:	\$100

INSTRUCTIONS:

1. PAYMENT MUST BE MADE BY CERTIFIED CHECK OR MONEY ORDER PAYABLE TO:

CLERK OF COURT, U.S. DISTRICT COURT

PERSONAL CHECKS WILL NOT BE ACCEPTED

2. PAYMENT MUST REACH THE CLERK'S OFFICE WITHIN 30 DAYS OF THE ENTRY OF YOUR GUILTY PLEA

3. PAYMENT SHOULD BE SENT OR HAND DELIVERED TO:

Clerk of Court
U.S. District Court
121 Spring Street, SE
Gainesville, GA 30501

(Do not Send Cash)

4. INCLUDE DEFENDANT'S NAME ON CERTIFIED CHECK OR MONEY ORDER

5. ENCLOSE THIS COUPON TO INSURE PROPER AND PROMPT APPLICATION OF PAYMENT

6. PROVIDE PROOF OF PAYMENT TO THE ABOVE-SIGNED AUSA WITHIN 30 DAYS OF THE GUILTY PLEA